

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
	§	
SKYPORT GLOBAL	§	CASE NO. 08-36737-H4-11
COMMUNICATIONS, INC.,	§	
Debtor	§	
<hr/>		
JOANNE SCHERMERHORN, ET AL.,	§	
Plaintiffs	§	
	§	
v.	§	ADVERSARY NO. 10-03150
	§	
CENTURYTEL, INC. (A/K/A	§	
CENTURLINK), ET AL.,	§	
Defendants	§	
<hr/>		
SKYPORT GLOBAL	§	ADVERSARY NO. 10-03225
COMMUNICATIONS, INC., ET AL.,	§	
Plaintiffs	§	
	§	
v.	§	
	§	
JOANNE SCHERMERHORN, ET AL.,	§	(CONSOLIDATED UNDER
Defendants	§	ADVERSARY NO. 10-03150)

**PLAINTIFFS' AMENDED MOTION TO SUPPLEMENT THE RECORD**

**NOTICE PURSUANT TO LOCAL RULE 9013**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED.**

**IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

The above-captioned Plaintiffs, Joanne Schermerhorn, et al., (the “Schermerhorn Parties”), in Adversary Proceeding No. 10-03150 (also Defendants in Adversary Proceeding No. 10-03225), file this amended motion to supplement the record of the hearing before this Court held on May 27, 2010, and in support thereof states as follows:

1. At the hearing before this Court on May 27, 2010 on the removal and requested remand of this action, one of the witnesses, Bill B. McCrary, mentioned on cross-examination a two page memorandum he had written about his concerns regarding SkyComm. Mr. McCrary did not refer to this memorandum in his direct testimony. He did not have a copy of the memorandum at the hearing and it was not introduced into evidence at the hearing.

2. This memorandum, however, turned out to have a critical role in the Court’s ruling at the hearing; the Court cited the memorandum several times as proof that Mr. McCrary had suspicions about Kubbernus’ fraudulent conduct before the SkyPort bankruptcy plan was confirmed in August 2009, but did not raise those concerns in the SkyPort bankruptcy proceeding. See Transcript of Hearing held on May 27, 2010 before Hon. Jeff Bohm at 273, 279, 285 and 293.

3. However, as can be seen by examining the memorandum and the accompanying Declaration of Bill B. McCrary, annexed hereto as Exhibit 1, the memorandum was written in October 2007, one year before the SkyPort bankruptcy proceeding was filed, and concerned events occurring in 2005 and 2006. It had nothing to do with any suspicions by Mr. McCrary that Kubbernus had committed fraud, but rather dealt with Mr. McCrary’s concerns about defendant CenturyTel Inc.’s actions in 2005 and 2006.

4. The memorandum was provided by Mr. McCrary to Mr. Goldman at the end of January 2010, almost half a year after the entry of the order confirming the Chapter 11 plan in the SkyPort bankruptcy proceeding. The McCray Declaration explains this and places the memorandum in context in relation to the issues before the Court.<sup>1</sup>

5. The evidentiary significance of this memorandum is that it does not evidence Plaintiffs' knowledge or suspicion of Kubbernus' fraud during the pendency of the SkyPort bankruptcy proceeding. Rather, the memorandum is consistent with plaintiffs' contention that they did not know of or suspect Kubbernus' fraud until after the Chapter 11 plan was confirmed.

6. The Court has not yet issued its written decision or order in this case. Supplementing the record to include the memorandum and McCrary Declaration will assist the Court by providing a more complete record of the facts relevant to this issues at bar.

**WHEREFORE**, Plaintiffs respectfully request that the Court exercise its discretion by granting this motion and accepting the annexed Exhibits as supplements to the evidence before the Court at the May 27, 2010 hearing.

Dated: July 1, 2010

---

<sup>1</sup> Plaintiffs will produce Mr. McCrary for cross-examination, should defendants require cross-examination.

Respectfully submitted,

McFALL, BREITBEIL & SHULTS, P.C.

By: /s/ W. Steve Smith

W. STEVE SMITH  
State Bar No. 18700000  
1331 Lamar Street, Suite 1250  
Houston, Texas 77010  
Tel. 713-590-9300  
Fax. 713-590-9399  
Email: [ssmith@mcfall-law.com](mailto:ssmith@mcfall-law.com)

THE FRYAR LAW FIRM

By: /s/ Eric Fryar

F. ERIC FRYAR  
State Bar No. 07495770  
1001 Texas Ave., Suite 1400  
Houston, Texas 77002  
Tel. (888) 481-9995  
(281) 715-6396  
Main Fax: (281) 715-6397  
Direct Fax: (281) 605-1888  
Email: [efryar@fryarlawfirm.com](mailto:efryar@fryarlawfirm.com)

SAMUEL GOLDMAN & ASSOC.

By: /s/ Samuel Goldman

SAMUEL GOLDMAN  
100 Park Ave., 20<sup>th</sup> Fl.  
New York, NY 10017  
Tel. (212) 725-1400  
Fax. (212) 725-0805  
Email: [sg@sgalaw.com](mailto:sg@sgalaw.com)

HAROLD B. OBSTFELD, P.C.

By: /s/ Harold B. Obstfeld

HAROLD B. OBSTFELD

100 Park Ave., 20<sup>th</sup> Floor

New York, NY 10017

Tel. (212) 696-1212

Fax. (212) 867-7360

Email: [hobsd@erols.com](mailto:hobsd@erols.com)

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document is being served on the 1<sup>st</sup> day of July, 2010, on all of the following parties via regular first class mail, postage prepaid. Those ECF users registered in this case will receive electronic notice on July 1, 2010.

Office of U.S. Trustee  
515 Rusk Ave., Ste. 3516  
Houston, TX 77002

Hugh M. Ray, III  
McKool Smith, P.C.  
600 Travis, Suite 7000  
Houston, TX 77002

Robert M. Manley  
McKool Smith, P.C.  
300 Crescent Court, Suite 1500  
Dallas, TX 75201

Edward L. Rothberg  
Hoover Slovacek, L.P.  
5847 San Felipe, Ste. 2200  
Houston, TX 77057

David R. Jones  
Elizabeth Freeman  
Porter & Hedges, LLP  
1000 Main Street, 36<sup>th</sup> Fl.  
Houston, TX 77002  
(Subject to Special Appearance)

Wilson Vukelich, LLP  
Valleywood Corporate Centre  
60 Columbia Way, Suite 710  
Markham, Ontario L3R 0C9  
CANADA

/s/ W. Steve Smith

W. Steve Smith